

AMENDED IN ASSEMBLY FEBRUARY 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1766

Introduced by Assembly Member Mark Stone

February 3, 2016

An act to amend Sections 222.5 and 223 of the Code of Civil Procedure, relating to jurors.

LEGISLATIVE COUNSEL’S DIGEST

AB 1766, as amended, Mark Stone. Examination of prospective jurors.

In civil trials, existing law requires a trial judge to examine prospective jurors, and, upon completion of the judge’s examination, grants counsel for each party the right to examine, by oral and direct questioning, any prospective juror in order to enable counsel to intelligently exercise peremptory challenges and challenges for cause. Existing law provides that the judge in civil trials should provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called.

Under existing law, which was enacted by initiative measure, in a criminal case, the court is required to conduct the examination of prospective jurors, except that the court may permit the parties, upon a showing of good cause, to conduct a further inquiry. The initiative measure provides that it may be amended by a measure enacted by a 2/3 vote of each house.

This bill would, in criminal trials, require the court to provide the complete names of prospective jurors to counsel for each party, as specified. The bill would also, in civil and criminal trials, require the court and counsel for each party to address a prospective juror using a

number assigned by the court or by the ~~potential~~ prospective juror's first name and last initial. The bill would also make nonsubstantive changes to these provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 222.5 of the Code of Civil Procedure is
2 amended to read:

3 222.5. (a) To select a fair and impartial jury in civil jury trials,
4 the ~~trial judge~~ court shall examine the prospective jurors. Upon
5 completion of the ~~trial judge's~~ court's initial examination, counsel
6 for each party shall have the right to examine, by oral and direct
7 questioning, any of the prospective jurors so that counsel may
8 intelligently exercise both peremptory challenges and challenges
9 for cause. During any examination conducted by counsel for the
10 parties, the ~~trial judge~~ court should permit liberal and probing
11 examination calculated to discover bias or prejudice with regard
12 to the circumstances of the particular case. The fact that a topic
13 has been included in the ~~trial judge's~~ court's examination shall
14 not preclude additional nonrepetitive or nonduplicative questioning
15 in the same area by counsel.

16 (b) To help facilitate the jury selection process, the ~~trial judge~~
17 court in civil trials shall provide to counsel for each party the
18 complete names of the prospective jurors, both alphabetically and
19 in the order in which they will be called. However, a prospective
20 juror shall be addressed by the court and counsel for each party
21 by a number assigned by the court or by the ~~potential~~ prospective
22 juror's first name and last initial.

23 (c) The ~~trial judge~~ court should allow a brief opening statement
24 by counsel for each party before the commencement of the oral
25 questioning phase of the voir dire process.

26 (d) The scope of the examination conducted by counsel shall
27 be within reasonable limits prescribed by the ~~trial judge~~ court in
28 the ~~trial judge's~~ court's sound discretion. In exercising ~~his or her~~
29 *its* sound discretion as to the form and subject matter of voir dire
30 questions, the ~~trial judge~~ court should consider, among other
31 criteria, any unique or complex elements, legal or factual, in the
32 case and the individual responses or conduct of jurors that may

1 evince attitudes inconsistent with suitability to serve as a fair and
2 impartial juror in the particular case. Specific unreasonable or
3 arbitrary time limits shall not be imposed in any case. The ~~trial~~
4 ~~judge court~~ shall not establish a blanket policy of a time limit for
5 voir dire.

6 (e) The ~~trial judge court~~ should permit counsel to conduct voir
7 dire examination without requiring prior submission of the
8 questions unless a particular counsel engages in improper
9 questioning. For purposes of this section, an “improper question”
10 is any question that, as its dominant purpose, attempts to
11 precondition the prospective jurors to a particular result,
12 indoctrinate the jury, or question the prospective jurors concerning
13 the pleadings or the applicable law. A court shall not arbitrarily
14 or unreasonably refuse to submit reasonable written questionnaires,
15 the contents of which are determined by the court in its sound
16 discretion, when requested by counsel. If a questionnaire is used,
17 the parties should be given reasonable time to evaluate the
18 responses to the questionnaires before oral questioning commences.

19 (f) In civil cases, the court may, upon stipulation by counsel for
20 all the parties appearing in the action, permit counsel to examine
21 the prospective jurors outside the ~~trial judge’s court’s~~ presence.

22 SEC. 2. Section 223 of the Code of Civil Procedure is amended
23 to read:

24 223. (a) In a criminal case, the court shall conduct an initial
25 examination of prospective jurors. The court may submit to the
26 prospective jurors additional questions requested by the parties as
27 it deems proper.

28 (b) The court shall provide to counsel for each party the
29 complete names of the prospective jurors, both alphabetically and
30 in the order in which they will be called. However, a prospective
31 juror shall be addressed by the court and counsel for each party
32 by a number assigned by the court or by the ~~potential prospective~~
33 juror’s first name and last initial.

34 (c) Upon completion of the court’s initial examination, counsel
35 for each party shall have the right to examine, by oral and direct
36 questioning, any or all of the prospective jurors. The court may,
37 in the exercise of its discretion, limit the oral and direct questioning
38 of prospective jurors by counsel. The court may specify the
39 maximum amount of time that counsel for each party may question
40 an individual juror, or may specify an aggregate amount of time

1 for each party, which can then be allocated among the prospective
2 jurors by counsel.

3 (d) Voir dire of prospective jurors shall, where practicable, occur
4 in the presence of the other jurors in all criminal cases, including
5 death penalty cases. Examination of prospective jurors shall be
6 conducted only in aid of the exercise of challenges for cause.

7 (e) The ~~trial~~ court's exercise of its discretion in the manner in
8 which voir dire is conducted, including any limitation on the time
9 which will be allowed for direct questioning of prospective jurors
10 by counsel and any determination that a question is not in aid of
11 the exercise of challenges for cause, shall not cause any conviction
12 to be reversed unless the exercise of that discretion has resulted
13 in a miscarriage of justice, as specified in Section 13 of Article VI
14 of the California Constitution.